



**State of Vermont
Labor Relations Board**

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June 19, 2018

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Honorable Philip B. Scott
Governor, State of Vermont
Pavilion Office Building
Montpelier, VT

Dear Governor:

There currently are appointments of three of the six members of the Vermont Labor Relations Board awaiting action. One of the appointments is for a member with a neutral background due to the action of the Vermont Senate to not confirm Karen O'Neill's appointment to the Board. The two other positions are for a member with a labor background and a member with a neutral background due to terms of two existing Board members expiring on June 30.

It is critical to the uninterrupted operations of the Board that these appointments are made soon, but it is important as well to the continued credibility of the Board that the statutory process for these appointments set forth in the State Employees Labor Relations Act is followed. We accordingly are addressing this letter to you to express our concerns with respect to the process being followed to develop a list of qualified nominees to submit to you from which you will appoint members to the Board.

The State Employees Labor Relations Act provides that the Governor shall appoint Labor Relation Board members from a list of nominees presented by the Labor Board Review Panel. 3 V.S.A. § 921(a). Among the five members of the Labor Board Review Panel are a "Representative of Labor and a Representative of employers" whom are appointed for two-year terms by the Commissioner of Labor "from names provided by labor organizations and employers in the State". 3 V.S.A. § 921(a)(1)

When a vacancy on the Board arose last fall, upon the resignation of a Board member with a neutral background, the Labor Board Review Panel had to be convened to present nominees to you to fill the vacancy. The Commissioner of Labor contacted Jeffrey Wimette of the International Brotherhood Electrical Workers and asked him to serve as Labor Representative on the Review Panel. The Commissioner subsequently appointed Mr. Wimette. The Commissioner received input from one labor organization before appointing Mr. Wimette to the Review Panel although the statute requires that names be provided by labor organizations (See Paragraphs 21 and 23 of Washington County Superior Court Complaint, Docket No. 241-4-18 Wncv, filed on April 27, 2018, by unions, and the Answers to these paragraphs filed on May 31, 2018, by the Commissioner of Labor and the Labor Board Review Panel). The Review Panel as constituted with Mr. Wimette as Labor Representative subsequently submitted nominees to you



to fill the vacancy, and you appointed Karen O'Neill from these nominees as a Board member with a neutral background to fill the vacancy.

It is our understanding that the Labor Board Review Panel is now considering nominees and applicants for the Board member appointments awaiting action with no changes having been made with respect to the Labor Representative position on the Review Panel. We are concerned that the legitimacy of any future appointments made to the Labor Relations Board may be questioned under this present arrangement because the Labor Representative has not been appointed to the Review Panel from names provided by "labor organizations" as required by 3 V.S.A. § 921(a)(1). The statutory language is in the plural, explicitly requiring input from more than one labor organization before appointing the Labor Representative to the Review Panel. We raise this concern now so that a correction consistent with statutory direction may be made prior to any further Board appointments. It would be detrimental to the credibility and effectiveness of the Board, as well as unfair to the person appointed as Board member, if uncertainty exists as to the legitimacy of the appointment. The possibility of future appeals of Board decisions based on this issue needs to be avoided. The impartiality, and appearance of impartiality, of the Board is of fundamental importance and can be promoted with this correction.

Our raising of this issue is no reflection on the particular person, Mr. Wimette, serving as the Labor Representative on the Review Panel. Instead, it is a question of proper process being followed. We note as well that this issue has nothing to do with any questions whether Karen O'Neill is a person with a neutral background. That is a question that is outside the purview of the Board and has no relation to the concerns we raise here.

Sincerely,

/s/ Richard W. Park

Richard W. Park, Chairperson and Member with
management background
Vermont Labor Relations Board

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr., Member with labor
background
Vermont Labor Relations Board

cc: Commissioner Lindsay Kurrle

Jeffrey Wimette

Joseph McNeil, Esq.

John Berard

Timothy Belcher, Esq.

Alfred Gordon O'Connell, Esq.

Vermont-NEA

Vermont Troopers Association

Professional Fire Fighters of Vermont, AFL-CIO

American Federation of Teachers-Vermont, AFL-CIO

United Academics-AFT/AAUP